

# **Probation Law Primer And Legal Update**



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## ***State v. Ross***

423 S.C. 504, 815 S.E.2d 754

- Supreme Court ruling that people on GPS tracking pursuant to S.C. Code 23-3-540(E) are entitled to a Fourth Amendment hearing.
- GPS tracking is a search under the Fourth Amendment, so the court must make a determination of reasonableness.
- Other Jessie's Law cases are still authorized under *State v. Dykes*, 403 S.C. 499 (2013).
- The Department has requested that *Ross* hearings be held for the ~80 individuals affected by the Supreme Court decision.
- PPP has contacted the solicitors and provided them a list of people needing *Ross* hearings.
- Several hearings have been conducted so far.
- Going forward, any defendant convicted of Failure to Register, and who has a prior Jessie's Law offense (CSC w/ Minor 1<sup>st</sup> and 3<sup>rd</sup> / Lewd Act) must have a *Ross* hearing before they may be monitored by a GPS device.
- The court must determine if it is reasonable to order the tracking. If the court finds that it is, then the court must order the GPS.

## **Violations Step-by-Step**

### **Process:**

1. Violation
2. Staffing
3. Process issued
4. Bond hearing
5. Administrative hearing
6. Final hearing

## **Violations – Compliance**

Violations that require measured responses.

These violations are addressed through the use of counseling, public service employment, verbal reprimands, revising the supervision plans, and inpatient or outpatient treatment.

Responses are related to the type of violation. I.E., drug treatment for failed drug tests, or referrals to vocational rehabilitation for prolonged unemployment.

Repeated violations will see graduated sanctions.

If offenders fail to respond to the graduated sanctions, the agents will bring the case back to General Sessions.

## **Violations – Community Safety**

Serious violations that require an immediate response.

These include weapons violations, contact with victims, new criminal offenses, and other signs the offender is a danger.

Agents may issue a warrant for the arrest of the offender and take the case back to court.

Bond cannot be denied for probation warrants.

The sentencing court and the court where the violation occurred both have jurisdiction to hear the case.

## Issuing Process

- Citation
  - Non-arrest
  - Confers jurisdiction on the revoking authority.
- Warrant
  - Grants authority to all law enforcement officers to arrest the offender.

## Bond Hearing

	PROBATION	COMMUNITY SUPERVISION	PAROLE	SRP
BOND	<u>MAGISTRATE</u>	<u>MAGISTRATE</u>	<u>GENERAL SESSIONS</u>	<u>NO BOND</u>
FINAL HEARING	GENERAL SESSIONS	GENERAL SESSIONS	PAROLE BOARD	ADMIN. HEARING OFFICER
APPOINTED ATTORNEY	RIGHT	RIGHT	EXTRAORDINARY CIRCUMSTANCES	NONE

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## Administrative Hearings

- Held before a hearing officer of the Department.
- May be waived by the offender.
- Offender may be represented by counsel.
- The hearing officer may resolve the violation by imposing administrative sanctions.
- New conditions are submitted to the court through a consent order.
- May forward case to General Sessions.

## **Violation Hearings**

Heard before the final revoking authority.

### **General Sessions Court:**

- Probation
- CSP

### **Parole Board:**

- Parole (includes Shock Parole)

### **Administrative Hearing Officer:**

- SRP
- Supervised Furlough

## **Community Supervision (CSP)**

### **Supervision required by statute for all “no parole” offenses (except LWOP).**

- CSP begins automatically after serving 85% of a “no parole” offense.
- Maximum two year period of supervision.
- Cannot go longer than the remaining 15% of the original sentence.
- Violations are heard in GS court.
- The judge may continue CSP, or revoke up to one year.
- If revoked, the offender must complete a new two-year period of CSP after release from incarceration

## **Community Supervision Surprises**

- Many “no parole” offenses can be suspended entirely to probation. In those cases, the offender will not be on CSP, but probation.
- Upon a revocation of probation, the offender will begin a 2-year term of CSP if the judge revokes 91 days or more (enough to send him to the Department of Corrections).
- Thanks to Picklesimer, the offender is now responsible for the full suspended portion, no matter the amount the judge revoked.
- Split sentences of “no parole” offenses will be released to CSP, not probation.

## **YOAs and Shock Incarceration**

- **Youthful Offender Act:**
  - Defined in Chapter 19 of Title 24.
  - Youthful Offenders must be between 17 and 25 years old at the time of the plea.
  - Offense must be non-violent, a misdemeanor or a Class D, E, or F felony or carrying up to 15 years.
  - Youthful Offenders are incarcerated at the Department of Corrections and upon conditional release, supervised by SCDC case workers.
  
- **Shock Incarceration (or Shock Parole):**
  - Defined in Article 13 in Chapter 13 of Title 24.
  - Inmates must be under 30 years old.
  - Offense must be eligible for parole within 2 years.
  - Cannot be a violent offense.
  - Does not require recommendation by a judge.
  - The inmate must complete a 90-day incarceration program run by SCDC “which provides rigorous physical activity, intensive regimentation, and discipline and rehabilitation therapy and programming.” S.C. Code 24-13-1310(2)
  - Upon completion of Shock Incarceration, the inmate is granted parole, and is supervised by Probation and Parole.
  - The term of parole is based on the maximum sentence of the offense. YOAs have a maximum term of six years.
  - Upon a violation, the offender is returned to SCDC. YOA offenders out on Shock Parole will resume their YOA sentence.

## Sex Offender Conditions

Standard enhanced conditions for offenders convicted of sex offenses. These conditions apply to all offenders convicted of an offense that requires the SO registry.

- Highest level of supervision.
- Residence restrictions.
- Mandatory sex offender counseling.
- Must allow searches of computers, phones, etc.
- Other conditions as ordered by the court, including GPS.

## Sex Offender Condition Pitfalls

- **Residence restrictions:** May not reside within 1,000 feet of a school zone, park, day care, or public pool.
  - SC Code 23-3-535 does not apply to supervision!
  - The Court may exempt residency restrictions.
- **Mandatory sex offender counseling:**
  - Offenders must participate in counseling.
    - \*Be aware that *Alford* pleas do not exempt the defendant from this requirement! Prepare your clients that they will have to cooperate with counseling!
    - \*\**This usually requires admission of guilt!!!*



## **Administrative Monitoring**

- Automatic enrollment if there are financial arrearages at the end of supervision
- Applies to any form of supervision with an offense date after January 1, 2011.
- Must make “reasonable progress” toward financial obligations.
- PPP may charge \$10 per month for AM.

## **What happens if they don't pay?**

- Enrollment into GEAR – Tax returns
- Bring back to court for failure to make reasonable progress.
- The Court may hold the individual in contempt of court and order them confined for up to 90 days.
- Court may remove them from Administrative Monitoring if not able to pay and not likely to be able to pay.